
(2012) 02 MAD CK 0328

In the Madras High Court

Case No : Criminal R.C. No's. 1766 and 1699 of 2011

Selvam

APPELLANT

Vs

State
Murugan Vs State

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 150, 159
Constitution of India, 1950 — Article 19, 31
Criminal Procedure Code, 1973 (CrPC) — Section 451, 452, 457, 458, 459
Motor Vehicles Act, 1988 — Section 158(6)
Penal Code, 1860 (IPC) — Section 279, 302, 307, 323, 420

Citation : (2012) 2 CTC 549 : (2012) 3 KLT 25 SN

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Advocate : M. Guruprasad in Criminal RC. No. 1766/2011 and M/s. M. Selvam in Criminal RC. No. 1699/2011, for the Appellant; A.N. Thambidurai Additional Public Prosecutor in both cases and Mr. N.R. Elango, Amicus Curiae Senior Counsel, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice C.T. Selvam

1. These two revisions arise against orders dismissing petitions u/s 451 Cr.P.C. The revision petitioner in Crl. R.C. No. 1699 of 2011 is accused of offence u/s 302 IPC in case pending committal in P.R.C. No. 5 of 2011 on the file of Judicial Magistrate No. II, Krishnagiri. He is accused of having used a lorry to cause the death of his wife. The revision petitioner in Crl. R.C. No. 1766 of 2011 is accused of having committed offences under Sections 279, 323 and 307 of IPC and of having tried to cause the death of the informant in the case, by dashing his motorcycle against him. In the first case, the Court below has dismissed the petition informing that the lorry was materially needed during the course of trial and investigation and that if custody was granted, there was a chance of destruction thereof. In the next, the Court below dismissed the petition on the

reasoning that the vehicle was a material object in the case and that the case was a serious one. Some interesting questions arise for consideration. The Hon"ble Supreme Court in *Sunderbhai Ambalal Desai v. State of Gujarat*, (2003 (1) CTC 175) and *General Insurance Council and others v. State of Andhra Pradesh and others*, (2010) 6 SCC 768, has informed the need for passing orders of custody of vehicles, inter alia towards avoiding their going to seed by exposure to sun and rain as also through intervention of manual agency. Would the principles enunciated in these cases also enure to the benefit of accused persons?

2. The Supreme Court has indicated that vehicles need not be produced in court and in lieu thereof secondary evidence could be read. Photographs may be taken, duly authenticated and certified and detailed panchnama may be prepared. The photographs so taken may be used as secondary evidence during trial. If the answer to question one above is in the affirmative, then could not the same procedure be adopted also in respect of vehicles owned by accused persons?

3. If secondary evidence is permitted to be read in lieu of production and marking of vehicles, can return of vehicle be absolute and not merely by way of interim custody in cases where there is no dispute regards ownership? Would doing so, trample upon powers of court to direct confiscation of the conclusion at proceedings u/s 452 Cr.P.C.?

Section 452 Cr.P.C. reads as follows:

452. Order for disposal of property at conclusion of trial.-(1) When an inquiry or trial in any Criminal Court is concluded, the court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond with or without sureties, to the satisfaction of the court, engaging to restore such property to the court if the order made under subsection (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property

regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

4. This court first would observe that the power of confiscation provided in section 452 Cr.P.C is not meant to be used as an exercise of penal power. Confiscation is not to be ordered as a measure of punishment. In the Indian penal code as also other penal enactments punishment is prescribed for specific offences. Where, besides punishment, confiscation of vehicle used/involved in commission of offence is contemplated, the particular enactments, inform a particular procedure therefor. For instance, such provisions are to be found in the Essential Commodities Act, 1955 and the Tamil Nadu Prohibition Act, 1937. Similarly, where property has been acquired through proceeds of crime, confiscation thereof specifically is provided for. For instance, see the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997. Measures for recovery of proceeds of crime also are to be found in the Criminal Law Amendment Ordinance, 1944. For purposes of illustration, we will take it that an accused stands convicted for offence of murder. He would be sentenced to death or life imprisonment. Once he stands so sentenced, it would be most improper to confiscate his vehicle used/involved in the commission of offence, merely because of offence of murder stands established against him. Doing so, in the absence of any specific provision of law providing for confiscation of the vehicle, would amount to imposing a second punishment, not having the sanction of law. We are constrained to observe as above, since in many a case involving the commission of major criminal offences, we find that the trial courts routinely order confiscation of property used/involved, even without any enquiry. Property, normally should be returned to its owner, even if such person be an accused in the case. This would not amount to affording a premium to the wrong doer but would avoid punishment not contemplated in law. Therefore, the power of confiscation provided in Section 452 Cr.P.C, is only residual. It is to be resorted to in the absence of there being any proper person claiming the property. This court would quote with approval the observations of the Allahabad High Court in decision reported in 1962 (1) Cri.L.J. 243 (Vol.64. C.N.85) : AIR 1962 ALLAHABAD 153 (V 49 C 47) (State and another v. Jagannath Singhal):

3. Coming to the merits it may be stated at the outset that it is the admitted case of the parties that no order u/s 517, Cri. P. C., was passed by the criminal court which convicted the directors as also some of the employees of the Bankers u/s 420, I. P. C. Consequently there is no direction of the criminal court with regard to the sums of money seized by the police from the Bankers, The question for determination, therefore, is whether in these circumstances the money in the hands of the Government will be deemed to be their money or that of the Bankers or that of the depositors. Mr. Shambhu Prasad on behalf of the State has made what I may call to be a tall claim. His submission is that apart

from the provisions of the Cri. P. C, or statutes or Statutory orders dealing with matters relating to forfeiture of property the state has a general power to forfeit to itself all the property which has been obtained by a convicted person by committing a criminal offence. He has, however, not been able to point out the source of the power either by means of showing any statutory provision or a written text or decided case. Even the State can only act in accordance with the law. It is trite saying that law binds both the rulers and the subjects. Therefore there can be no forfeiture of property except under the law. That is so all the more in our country because Article 19 of the Constitution guarantees to every Indian citizen the right to enjoy his property subject only to reasonable restrictions and Article 31 provides that there will be no acquisition of property except as provided by law. There is thus to my mind no scope for the submission that the State has any general or inherent power to forfeit] property acquired by committing a crime or used in the commission of a crime, It is true that the State has the right of eminent domain to acquire for public purposes the property belonging to a subject but in accordance with the law and after paying compensation. Similarly where a person dies leaving property and there is a total failure of heirs the law of escheat intervenes vesting the property in the State on the ground that private ownership does not exist and the State becomes the owner as ultimate Lord (see *Collector of Masuliputam v Cavalry Vencata Narrainapah*, 8 Moo Ind App 500 at p. 525 (PC)). It is also well established that property by which or for which an offence has been committed has ultimately to go to its real Owner and an order passed by a criminal court u/s 517 Cr. P. C., does not settle any rights nor confers any title. It only empowers the criminal court to dispose of the property in a Summary manner (see *Ibrahim Rahamatullah v. Emperor*, AIR 1947 Nag 33). The matter can finally be decided only by a civil court. Even in cases where the criminal court does not pass any order with regard to a property with which or in respect of which an offence has been committed, the civil court of competent jurisdiction can pass a decree in respect of that property in favour of its real owner.

5. Once we reach the above conclusion, it would be seen that in directing return of vehicles, even to accused persons, in the manner contemplated in the decisions of the apex court of *Sunderbhai Ambalal Desai v. State of Gujarat*, (2003 (1) CTC 175) and *General Insurance Council and others v. State of Andhra Pradesh and others*, (2010) 6 SCC 768, no trampling of powers bestowed upon the trial courts u/s 452 Cr.P.C is involved. Therefore, it would be fit and proper to deal with applications seeking return of vehicles without being clouded with the vision of the claimant being an accused. It would not be out of place to inform that section 451 Cr.P.C. which provides for custody and disposal of property pending trial also provides for disposal of property by sale or otherwise where it is otherwise expedient so to do. It is such expediency, that has led to the decisions of the apex court in the above referred cases. This court in the case of *Sundaram Finance Ltd., V. The State of Tamil Nadu*, 2011 (1) MWN (Cr.) 437 reproduced the salient paragraphs in the judgment of the Hon'ble Apex Court in

Sunderbhai Ambalal Desai v. State of Gujarat (cited supra) which read as follows:

3. At the time of the hearing of these matters, learned counsel for the parties submitted that various articles are kept at the police station for a long period by not adhering to the procedure prescribed under CrPC, which creates difficulties for keeping them in safe custody. Finally, the sufferers are either the State exchequer or the citizens whose articles are kept in such custody. It is submitted that speedier procedure is required to be evolved either by the court or under the rules for disposal of mudammal articles which are kept at various police stations as most of the police stations are flooded with seized articles. It is, therefore, submitted that directions be given so that burden of the courts as well as at the police stations can, to some extent, be reduced and that there may not be any scope for misappropriation or of replacement of valuable articles by spurious articles.

4. Learned counsel further referred to the relevant Sections 451 and 457 of the Code of Criminal Procedure, which read thus:

451. Order for custody and disposal of property pending trial in certain cases. When any property is produced before any criminal court during any inquiry or trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of. Explanation. For the purposes of this section, property includes

(a) property of any kind or document which is produced before the court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

457. Procedure by police upon seizure of property.

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a criminal court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

5. Section 451 clearly empowers the court to pass appropriate orders with regard

to such property, such as:

- (1) for the proper custody pending conclusion of the inquiry or trial;
- (2) to order it to be sold or otherwise disposed of, after recording such evidence as it thinks necessary;
- (3) if the property is subject to speedy and natural decay, to dispose of the same.

6. It is submitted that despite wide powers, proper orders are not passed by the courts. It is also pointed out that in the State of Gujarat there is Gujarat Police Manual for disposal and custody of such articles. As per the manual also, various circulars are issued for maintenance of proper registers for keeping the mudammal articles in safe custody.

7. In our view, the powers u/s 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;
2. court or the police would not be required to keep the article in safe custody;
3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

8. The question of proper custody of the seized article is raised in a number of matters. In *Basavva Kom Dyamangouda Patil v. State of Mysore* 1 this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under: 4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential

requirements of the Code is that the articles concerned must be produced before the court or should be in its custody. The object of the Code seems to be that any property which is in the control of the court either directly or indirectly should be disposed of by the court and a just and proper order should be passed by the court regarding its disposal. In a criminal case, the police always acts under the direct control of the court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the court exercises an overall control on the actions of the police officers in every case where it has taken cognizance.

9. The Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

10. To avoid such a situation, in our view, powers u/s 451 CrPC should be exercised promptly and at the earliest.

15. Learned Senior Counsel Mr Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, a number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to their owners or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicles if required by the court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over the vehicle to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the persons concerned.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said

vehicle should be taken and detailed panchnama should be prepared.

24. In our view, no further directions are required to be given in these matters. However, it is made clear that in case where accused disputes that he is not involved in the alleged incident and no article was found from him then such endorsement be taken on the photograph. Further with regard to the vehicle also, it is made clear that there may not be any necessity of producing the vehicle before the Court and the Seizure Report may be sufficient. The Special Leave Petitions are disposed of accordingly."

6. In *General Insurance Council and others v. State of Andhra Pradesh and others*, (2010) 6 SCC 768, the Hon'ble Apex Court after taking note of the directions contained in *Sunderbhai Ambalal Desai v. State of Gujarat* observed and further directed as follows:

8. Since it appeared to the petitioners that despite the said directions, the requirements of the petitioners were not being fulfilled, they were constrained to file WP (C) No. 282 of 2007 titled *General Insurance Council v. State of A.P.2*, decided on 9-7-2007 by a coordinate Bench of two learned Judges of this Court.

9. In this second round of litigation before this Court, a direction was sought with regard to compliance with Section 158(6) of the Motor Vehicles Act, 1988 (in short "the MV Act") and Rule 150 of the Central Motor Vehicles Rules, 1989 (in short "the Rules"). This Court in the said matter after considering the issue came to the following conclusion: (*General Insurance Council case2*, SCC p. 358, paras 9-11)

9. Since there is a mandatory requirement to act in the manner provided in Section 158(6) there is no justifiable reason as to why the requirement is not being followed.

10. It is, therefore, directed that all the State Governments and the Union Territories shall instruct, if not already done, all police officers concerned about the need to comply with the requirement of Section 158(6) keeping in view the requirement indicated in Rule 150 and in Form 54. Periodical checking shall be done by the Inspector General of Police concerned to ensure that the requirements are being complied with. In case there is non-compliance, appropriate action shall be taken against the erring officials. The Department of Road Transport and Highways shall make periodical verification to ensure that action is being taken and in case of any deviation immediately bring the same to the notice of the State Governments/Union Territories concerned so that necessary action can be taken against the officials concerned. The writ petition is accordingly disposed of.

10. Despite the aforesaid directions having been issued by this Court in the aforesaid two matters, grievance is still being made by the petitioners, that the police, investigating agency and the prosecuting agency are not taking appropriate and adequate steps for compliance with the aforesaid directions

issued by this Court. Therefore, a need has arisen for giving further directions so as to clear the clouds and iron out the creases.

11. Notice of the said petition was issued to all the States and Union Territories. Almost all the States have contended that they have already issued necessary guidelines and directions for full and complete compliance with the provisions contained in Sections 451 and 457 of the Code as elaborated in *Sunderbhai Ambalal Desai*¹ as also u/s 158(6) of the MV Act and Rule 159 of the Rules as directed in *General Insurance Council* case. Thus, in one voice, they have contended that there would not be any difficulty in compliance with the directions that may be issued in furtherance of achieving the object as directed by this Court. Thus, in our view, there appears to be consensus in this matter.

12. The petitioners have submitted that information with regard to all insured vehicles in the country is available with the Insurance Information Bureau created by IRDA. This information could be utilised to assist the police to identify the insurer of the vehicle. Upon recovery of the vehicle in police station, insurer/complainant can call an all-India toll free number to be provided by the Insurance Information Bureau to give the information of the recovered vehicle. Thereafter, the insured vehicle database would be searched to identify the respective insurer. Upon such identification, this information can be communicated to the respective insurer and police stations concerned for necessary coordination.

13. In our considered opinion, the aforesaid information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the insurer. We also feel, it is necessary that in addition to the directions issued by this Court in *Sunderbhai Ambalal Desai*¹ considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given:

(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the jurisdictional court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.

(B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.

(C) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer."

14. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only do they occupy substantial space in the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its roadworthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police station, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the division/Commissioner of Police concerned of the cities/Superintendent of Police concerned of the district concerned.

15. In case any non-compliance is reported either by the petitioners or by any of the aggrieved party, then needless to say, we would be constrained to take a serious view of the matter against an erring officer who would be dealt with iron hands. With the aforesaid directions, this writ petition stands finally disposed of.

7. This court in the case of Sundaram Finance Ltd., V. The State of Tamil Nadu, 2011 (1) MWN (Cr.) 437 observed as follows:

11. This Court is of the firm opinion that return of vehicles and permission for sale thereof should be the general norm rather than the exception it is today. The clear dictate of the Hon"ble Apex Court in this regard is followed more in the breach than in observance. Given the facilities of the modern day, there hardly is any scope to think that evidence relating to vehicles cannot be held in altered form. Causing of photographs and resort to videography, together with recording such evidence as befits a particular case would well serve the purpose. In cases where return of vehicles is sought and the claim therefor is highly contested, resort to sale of vehicle and credit of the proceeds in fixed deposits pending disposal of the case would be to the common good. None gain when the mere shell or the remnants of the vehicle are returned to the person entitled thereto, after completion of the trial. It would be no surprise to find that several vehicles have not been so much as claimed after completion of trial, because of the worthless state they have been reduced to. It is but natural to expect that a person eventually entitled would rather have the sale proceeds together with interest, than nothing at all.

8. In the light of the above it is expected that the Courts below will make all out efforts to avoid holding of vehicles at Courts and Police Stations and dispose of petitions seeking return of vehicles in such a manner as is found most feasible in the facts of a particular case. The same may be by ordering of return in favour of the owner or insurer or even by sale and deposit of the proceeds.

9. Both the Criminal Revision Petitions shall stand allowed. The Courts below shall effect return of the vehicles to the revision petitioners after causing necessary photographs and panchnama. The panchnama shall be drawn up by an Officer of the Court in the presence of two panchayatdhars and in the immediate presence of the Presiding Officer of the Court. The Registry is directed to circulate a copy of this order to all Sessions/Metropolitan/Judicial Magistrate Courts.